No. 477

Office-Supreme Court, U.S.
FILED
OCT 11 1966
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

JOHN P. O'CONNOR,	:	October Term, 1966
Petitioner	:	U.S. S.C. No. 477
-vs-	:	O.S.C. No. 39119
THE STATE OF OHIO,	:	C.A. No. 5850
Respondent	:	C.P. No. 41973

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HARRY FRIBERG,
Prosecuting Attorney

ANTHONY G. PIZZA,
Ass't. Prosecuting Attorney
Lucas County, Ohio

Attorneys For Respondent

JAMES W. COWELL,
362 Spitzer Bldg.

RAYMOND S. METZGER, JR.,
810 Edison Bldg.
Toledo, Ohio

Attorneys For Petitioner

THE WEST TOLEDO PUBLISHING CO., INC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... (a)

BRIEF 1-2

CERTIFICATION 3

TABLE OF AUTHORITIES

6 O.S. 2d pp 169 ..... 1 & 2

Mapp v. Ohio 367 U.S. 643 1

In the Supreme Court of the United States

JOHN P. O'CONNOR,	:	October Term, 1966
Petitioner	:	U.S. S.C. No. 477
-VS-	:	O.S.C. No. 39119
THE STATE OF OHIO,	:	C.A. No. 5850
Respondent	:	C.P. No. 41973

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The question to be decided in this matter is whether the Supreme Court of Ohio may properly refuse to consider a claim of error that was not raised in any way in the trial court or the Court of Appeals and was not considered or decided by the Supreme Court of Ohio.

The Supreme Court of Ohio, by its decision in this case, *6 O.S. 2d pp 169* has decided this question in the affirmative basing its decision on the rules of the Supreme Court of the United States which are based upon the constitutional (Section 2, Article III) and statutory (Section 1257, Title 28, U.S. Code) provisions defining and limiting the appellate jurisdiction of that court. For example, in Rule 23, 1 (F), of the Supreme Court, relative to petitions for certiorari, the petitioner is required to "show that the federal question was timely and properly raised so as to give this

Court jurisdiction to review the judgment of Writ of Certiorari," and Rule 16, 1 (b) provides that "the court will receive a motion to dismiss an appeal from the state court on the ground * * * that the federal question sought to be reviewed was not timely or properly raised, or expressly passed on; or that the judgment rests on an adequate non-federal basis."

The Supreme Court of Ohio further based its decision relying on footnote nine (9) of Mapp v. Ohio 367 U.S. 643, wherein it was stated:

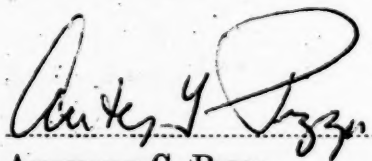
> "As is always the case, however, state procedural requirements governing assertion and pursuance of direct and collateral constitutional challenges to criminal prosecutions must be respected."

The Opinion, as written by Chief Justice Taft, *6 O.S. 2d 169*, cannot be improved upon by this writer. This writer adopts the majority opinion in said case in total.

For the foregoing reasons, the petition of the petitioner for Writ of Certiorari should be denied.

Respectfully submitted,

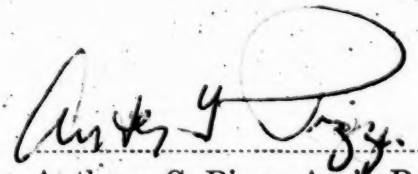
HARRY FRIBERG,
Prosecuting Attorney



ANTHONY G. PIZZA,
Ass't. Prosecuting Attorney
Lucas County, Ohio

CERTIFICATION

This is to certify that a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari was mailed, via U. S. Mail, to James W. Cowell, Counsel for Petitioner, 362 Spitzer Building, Toledo, Ohio, this 3rd day of October, 1966.



Anthony G. Pizza, Ass't. Prosecuting Atty.